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| 10/501,158                      | 07/12/2004  | Philippe Thurot      | AP017-04              | 5346             |
| 29680                           | 7590        | 10/14/2008           | EXAMINER              |                  |
| DAVID A. GUERRA                 |             |                      | BOWERS, NATHAN ANDREW |                  |
| INTERNATIONAL PATENT GROUP, LLC |             |                      |                       |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/501,158

**Applicant(s)**

THUROT, PHILIPPE

**Examiner**

NATHAN A. BOWERS

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 9-11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Claim 9 includes the limitation "tapered air strainer," however this feature is not presented in Applicant's original specification. Claim 9 was newly presented with the amendment of 2/7/2008, and the original claim set did not include any limitations describing the air strainer as tapered. Accordingly, the "tapered air strainer" limitation represents new matter.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1) Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider (US 4670148) in view of Katz (US 4838733) and Yao (US 6541073).

With respect to claims 1, Schneider discloses an optimized system for the regulation and discontinuous measurement of the gas content in composting waste. At least one remote bay (Figure 1:19) contains one or more gas measurement probes (Figure 2:10.1-10.5) that are capable of determining oxygen and carbon dioxide concentration. This is disclosed in column 2, lines 30-58 and in column 3, lines 12-40. Column 5, lines 40-57 state that the operation of a gas intake pump (Figure 1:13) and a plurality of electric valves (Figure 2:11.1-11.5) is regulated by a program controller (Figure 1:17). A pipe (Figure 1:9.3) connects each of the electric valves to a gas sampling device such that gases at the sampling device are sent to the measurement probes. The oxygen measurement probe is able to supply within a very short response time the measurement of oxygen content in the compost material. As evidenced by the Figures, the

sampling device comprises a rod with two opposite ends able to be driven into a pile of compost. Schneider, however, does not expressly disclose that the sampling rods include an air intake strainer.

Katz discloses a system in which air samples are removed from a compost pile using a plurality of sampling device rods (Figure 3:32). The rods are connected to a pump (Figure 1:78) capable of drawing gases through the use of suction. Column 3, lines 9-40 state that each rod includes an air intake strainer (Figure 3:48 and Figure 7:184).

Schneider and Katz are analogous art because they are from the same field of endeavor regarding compost gas removal devices.

At the time of the invention, it would have been obvious to include screens on each of the sampling rods disclosed by Schneider. Katz teaches that it is important to preclude the movement of solid compost chunks into the sampling rods. The use of screens effectively prevents such fouling while still allowing the sampling of gases. Katz teaches that the screens enable the passage of a great volume of gases over a given time, but holds back the solid materials of the landfill.

The combination of Schneider and Katz still differs from Applicant's invention because neither Schneider nor Katz teach the use of zirconium oxide sensors.

Yao discloses a zirconium oxide sensor capable of detecting oxygen levels in a plurality of biochemical applications. Column 1, lines 8-29 state that it is well known in the art to use zirconium oxide in the formation of electrode components within bioreactor oxygen probes.

Schneider and Yao are analogous art because they are from the same field of endeavor regarding oxygen detection sensors.

At the time of the invention, it would have been obvious to utilize the oxygen sensors disclosed by Yao in the system disclosed by Schneider. As evidenced by Yao, zirconium oxide probes are known in the art as effective means capable of monitoring oxygen concentrations within a gas stream. It would have been apparent to equip the system of Schneider with any oxygen sensor, including zirconia sensors, that are capable of effectively determining relative concentrations in real time.

With respect to claim 2, Schneider, Katz and Yao disclose the apparatus set forth in claim 1 as set forth in the 35 U.S.C. 103 rejection above. In addition, Schneider clearly teaches that the electric valves are physically separated from the program controller. Furthermore, the operation of the valves is regulated using the program controller.

2) Claims 3, 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider (US 4670148) in view of Katz (US 4838733) and Yao (US 6541073) as applied to claims 1 and 2, and further in view of Noble (US 4442974).

With respect to claims 3 and 8, Schneider, Katz disclose and Yao the apparatus set forth in claims 1 and 2 as set forth in the 35 U.S.C. 103 rejections above. Additionally, Katz clearly teaches that the sampling rods are connected to the pipe using a coupling (Figure 4:160) facilitating the fastening and insertion of the pipe. This is described in column 5, lines 47-64. Schneider and Katz, however, do not expressly teach that this coupling includes a packing gland.

Noble discloses a land irrigation system comprising a system of pipes capable of moving a fluid from a main line (Figure 1:33) out through a sprinkler line (Figure 1:25). The system of pipes is complex and requires many couplings to facilitate the fastening of individual pipes to one another. Noble teaches in column 6, lines 13-33 and column 7, line 67 to column 8, line 51 that packing glands are used to form couplings.

Schneider and Noble are analogous art because they are directed toward the same field of endeavor regarding the forming of pipe connections.

At the time of the invention, it would have been obvious to utilize packing glands in forming the connection between the pipe disclosed by Schneider to each individual rod. Noble teaches that packing glands are beneficial because they serve to reduce leakage while allowing for rotation of the pipes while connected. It would have required only minor alterations to the Schneider reference in order to utilize packing glands at the junction between the pipe and each rod.

With respect to claim 4, Schneider, Katz, Yao and Noble disclose the apparatus set forth in claim 3 as set forth in the 35 U.S.C. 103 rejection above. In addition, Schneider teaches that a single gas measurement probe can be used to monitor oxygen or carbon dioxide content of gas delivered from each of the plurality of sampling rods.

3) Claims 5, 6, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider (US 4670148) in view of Katz (US 4838733), Yao (US 6541073) and Noble (US 4442974), and further in view of Johnson (US 4026355).

Schneider, Katz, Yao and Noble disclose the combination as described in the 35 U.S.C. 103 rejections above. Schneider, however, does not expressly state that temperature is measured using at least one temperature probe.

Johnson discloses a method for testing and monitoring landfill gas comprising a plurality of rods (Figure 5:85) each capable of withdrawing a sample from the interior of a compost pile. Column 7, lines 21-33 further state that temperature probes are used to measure heat accumulation within the compost piles.

Schneider and Johnson are analogous art because they are from the same field of endeavor regarding compost gas monitoring devices.

At the time of the invention, it would have been obvious not only to provide oxygen concentration monitoring probes within the apparatus of Schneider, but also temperature monitoring probes as well. It is known in the art that temperature is a good indicator or microbial activity within a compost system. Furthermore, temperature readings can be used to anticipate undesirable pressure build-ups within the waste pile.

4) Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider (US 4670148) in view of Katz (US 4838733), Yao (US 6541073), Noble (US 4442974) and Johnson (US 4026355) as applied to claims 6 and 9, and further in view of Jackson (US 20020023505).

Schneider, Katz, Yao, Noble and Johnson disclose the apparatus set forth in claims 6 and 9, however do not expressly disclose the use of a rotameter.



Jackson discloses a system for removing air from the ground. Jackson teaches that a sampling rod (Figure 1:10) comprising a plurality of openings (Figure 1:12) is inserted into a subsurface region (Figure 1:13) so that air is removed from the subsurface for processing. This is disclosed in paragraph [0027]. Paragraphs [0031] and [0032] state that a rotameter is used to measure the rate of air flow through the sampling rod.

Schneider and Jackson are analogous art because they are from the same field of endeavor regarding subsurface air sampling devices.

At the time of the invention, it would have been obvious to include a rotameter device in the apparatus of Schneider. Jackson teaches that rotameters are desirable because they are well known in the art as effective flow rate measuring devices. Rotameters exhibit the additional advantage of forming a tight seal with a valve seat, thereby preventing air flow in a reverse direction. See Figure 4 and paragraph [0031].

### ***Response to Arguments***

Applicant's arguments filed 07 October 2008 with respect to the 35 U.S.C. 103 rejections involving the combination of Schneider with Katz and Yao have been fully considered but are not persuasive.

*Applicant's principle arguments are*

*(a) The Yao reference discloses a process of producing a zirconium oxide precursor that uses heat, but not a heated probe*

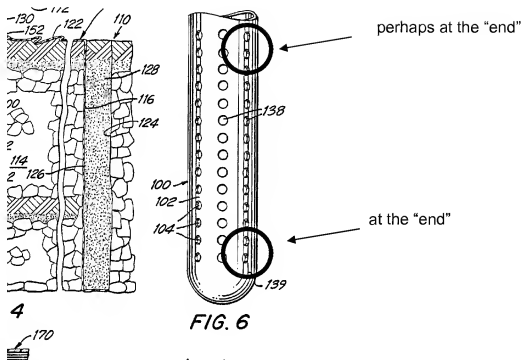
In response, please consider the following remarks.

Applicant does not dispute the claim that Yao discloses a zirconium oxide probe for determining oxygen concentration in a biological cell system. Applicant instead states that Yao does not disclose a heated probe. However, column 3, lines 15-28, column 5, lines 28-37 and column 6, lines 12-20 of Yao state that the zirconium oxide composition is formed through heat treatment of the zirconium compound precursor. Accordingly, it is understood that the zirconium oxide probe has been heated.

*(b) The Katz reference does not disclose an intake strainer at the end of each rod. The "end" of the Katz rod cannot be construed as including the lowermost strainers adjacent to the cap.*

In response, please consider the following remarks.

Although it is agreed that Katz does not disclose air intake orifices on the rounded cap of the rod, the "end" of the rod is considered to extend an arbitrary distance along cylindrical sidewall of the rod from the rounded cap. The air intake strainers located immediately adjacent to the rounded cap are certainly located at the "end" of the rod.



The fact that Katz does disclose the use of air intake orifices all along the sidewalls of each rod does not mean that at least some of the orifices are located at the end of the rod.

Applicant's definition of "end" as "either extremity of something that has length" does not necessarily exclude surfaces along the sidewalls of the rod near the rod tip so long as they are adequately close to the tip. It is entirely possible that a feature (in this case a strainer) might be "adjacent" to the rod tip and still be considered at the "end" of the rod.

Applicant's arguments filed with respect to the 35 U.S.C. 103 rejections involving claims 7 and 11 have been fully considered and are persuasive. Accordingly, these rejections have been withdrawn. However, upon further consideration, a new ground of rejection is made in view of the combination of Schneider, Katz, Yao, Noble, Johnson and Jackson.

The Jackson reference discloses that the use of rotameters in the subterranean air sampling art is well known and an effective means for measuring flow rate.

*Conclusion*

This is a non-final rejection.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan A. Bowers whose telephone number is (571) 272-8613. The examiner can normally be reached on Monday-Friday 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William H. Beisner/  
Primary Examiner, Art Unit 1797

/Nathan A Bowers/  
Examiner, Art Unit 1797